

State Water Contractors

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SEP 23 1999

September 23, 1999

Mr. Lester Snow, Executive Director
CALFED Bay-Delta Program
1416 9th Street
Sacramento, CA 95814

Attention: Mr. Rick Breitenbach

Dear Mr. Snow:

State Water Contractors Comments on Draft Programmatic EIS/EIR for the CALFED Bay-Delta Program

The State Water Contractors ("State Contractors") have received and reviewed the Draft Programmatic EIS/EIR (Draft PEIS/EIR) for the CALFED Bay-Delta Program (Program). This letter represents the response of the State Contractors, affected stakeholders in this Program from agricultural and urban areas in California, as required by the National Environmental Policy Act and the California Environmental Quality Act.

The State Contractors organization consists of 27 public agencies that hold contracts or rights for water delivered by the State Water Project ("SWP").¹ Member agencies of the State Contractors

¹The public agencies that comprise the State Contractors are the following: Alameda County Flood Control and Water Conservation District, Zone 7, Alameda County Water District, Antelope Valley-East Kern Water Agency, Casitas Municipal Water District, Castaic Lake Water Agency, Central Coast Water Authority, City of Yuba City, Coachella Valley Water District, County of Kings, Crestline-Lake Arrowhead Water Agency, Desert Water Agency, Dudley Ridge Water District, Empire-West Side Irrigation District, Kern County Water Agency, Littlerock Creek Irrigation District, Metropolitan Water District of Southern California, Mojave Water Agency, Napa County Flood Control and Water Conservation District, Oak Flat Water District, Palmdale Water District, San Bernardino Valley Municipal Water District, San Gabriel Valley Municipal Water District, San Geronio Pass Water Agency, San Luis Obispo County Flood Control and Water Conservation District, Santa Clara Valley Water District, Solano County Water Agency, and Tulare Lake Basin Water Storage District

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supply SWP water for drinking, commercial, industrial and agricultural purposes to nearly 22 million people (approximately two-thirds of California's population) residing in Northern California, the San Francisco Bay Area, the Central Valley, the Central Coast and Southern California. The comments in this letter address policy level, legal and technical issues and supplement the written and verbal comments that will be provided from many of the State Contractors member agencies. In addition to the issues raised in this letter, I have an attached specific technical concerns with the Draft PEIS/EIR.

Background

The State Contractors have participated intensively in CALFED and believe that this program represents an historic opportunity to cooperatively resolve long-standing environmental, water quality and water management issues. To understand this importance, it is necessary to provide some background. Prior to the Bay-Delta Accord (Accord) in 1994, California's water supply system was trapped in gridlock with negative consequences for the economy and the environment. The Accord stabilized the system in the short term and created CALFED to chart a long-term course that would benefit the environment and the water suppliers. Success in the Bay-Delta depends upon the ability to provide certainty to both the environment and water suppliers. The formula for mutual certainty is not complex:

- a) Ecosystem restoration funds and dedicated flows for the environment;
- b) Regulatory certainty for water suppliers (i.e., the amount of water taken for the environment without compensation is limited and water suppliers are protected from additional takings);
- c) Investment in system capacity and use of voluntary market mechanisms to make additional water available for water users and the environment; and
- d) Water quality.

With implementation of the Accord, the most impressive ecosystem restoration program in history has been started (in large part due to unprecedented support within the water user community) and the fishery is responding. Dedication of substantial quantities of environmental water in the Accord, and more than \$1 billion in ecosystem financing from state, federal, and water suppliers have substantially contributed to this turnaround.

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Support by the State Contractors and other members of the water community for aggressive ecosystem restoration was based on the promise that ecosystem actions would be bundled with actions to improve water supply and quality. The water management promises have not been kept. Recent events (e.g., delta smelt and Central Valley Project Improvement Act (CVPIA) b(2) issues) raise concerns that the federal government has abandoned the fundamental principle of mutual certainty. While resources to improve the environment continue to grow, water suppliers have experienced a steady series of regulatory setbacks. Available contractor water supplies today are less than at the time of the Accord, with further reductions almost certain (e.g., Trinity) if corrective action is not taken.

The CALFED dilemma is this: In its efforts to adopt a comprehensive program to benefit all interests, CALFED has been frozen into inaction by defining "consensus" in a manner that grants veto power to those with extreme views. Meanwhile, the federal regulatory agencies are not constrained by such a definition of consensus. The result: Unbalanced outcomes which cannot be supported by the State Contractors and the broader water community. This situation is not sustainable. Unless CALFED returns to the concept of mutual certainty, grassroots support in the business, labor, technology and water communities, already substantially weakened, will vanish. To sustain a strategy of incremental progress, CALFED must have periodic successes with tangible benefits for water suppliers and the environment.

The failure of CALFED will delay resolution of these critical environmental and economic problems for many years. Key interest groups will disengage and seek resolution of their issues through more adversarial means. Current federal funding for ecosystem restoration will disappear. The political consensus for ecosystem funding will evaporate with corresponding negative environmental implications. Water supplies will be subject to increasing uncertainty as we return to the Endangered Species Act (ESA)-driven operation of the water projects and ensuing conflicts. In short, a CALFED failure would mean a return to the regulatory and legislative gridlock which prevailed prior to 1994 – a return to conflict where all interests suffer.

Approach Needed to Reinvigorate CALFED

To avoid the likely failure of CALFED if it continues its present course within the existing context, the State Contractors believe that several measures can and must take place. First, the

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critical role of the Davis Administration and Secretary Babbitt must be recognized. CALFED cannot succeed without strong policy leadership from the state and federal government and a firm commitment to action that assures balanced outcomes. The recent visit by Secretary Babbitt was an encouraging start to establishing a strong state role and reinvigorating CALFED.

The water management and development process represents a promising beginning. The success of the process will require that balanced principles be established which reaffirm a commitment to "governance in the middle." CALFED's guiding principles are sound, but the separate CALFED agencies do not always abide by them. The stakeholders must all know that all agencies making individual or collective decisions will make them consistent with a set of balanced principles, including the following:

- a) The CALFED program must be comprehensive – NO OUTLIERS that adversely affect water users through unilateral action under CVPIA, ESA, or other statutes can be allowed.
- b) Share the gain/share the pain; all risks and benefits will be shared.
- c) Benefits will be phased for all parties; no party may claim that its needs are so important as to require negative impacts on others relative to the Accord.
- d) All parties must be willing to prioritize among their own objectives, since you cannot get everything you want.
- e) CALFED must return to a process, which closely involves stakeholders, but also provides for joint state/federal decision making when there is no agreement.

The State Contractors believe that a successful and balanced process will require CALFED's commitment to specific actions at the time of the Record of Decision for the PEIS/PEIR including the following:

- Establish an Environmental Water Account (EWA). An EWA, in combination with modified operational rules, must be in place before the next water year to avoid another "delta smelt crisis". The EWA should:
 - a) Create additional water and share it between the water users and environment;
 - b) Assure water suppliers of increased water supplies relative to those available under the Accord;

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- c) Assure improvements in source quality for urban drinking water; and
 - d) Provide regulatory assurances for the duration of Stage 1 of CALFED.
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- Implement the South Delta Program. CALFED should immediately implement the South Delta Program, including increasing the allowable exports at the Banks Pumping Plant to 10,300 cfs, dredging of south delta channels, an operable fish barrier at the head of Old River, and salinity barriers to assure delta water users of improved water quality and reliability.
 - Make a Decision About Storage. CALFED should make a commitment before the Record of Decision regarding how much new surface and groundwater storage capacity will be required to accomplish program objectives. CALFED should further commit to bring some new surface storage on line before the end of Stage 1.
 - Improve Source Water Quality. CALFED should work with urban water supply agencies to establish by the end of 1999 quantifiable benchmarks for the improvement of source water quality for bromides, total organic compounds (TOC), and salinity, as well as define specific measures within and outside the delta to accomplish these benchmarks. A Drinking Water Council should be established immediately.
 - Establish a Science Review Panel. A science review panel should be established immediately to assure that all environmental restoration actions are based on the best possible science. The panel members should have substantial credentials and minimal previous direct association with Bay-Delta issues.

Legal Adequacy

Considering the Draft PEIS/EIR document itself, the State Contractors have several concerns about its legal adequacy. These concerns – the limited extent of the alternatives definition, the lack of a defined No-Action Alternative, and the need for disclosure of actions subsequent to the release of the Draft PEIS/EIR – are described below. As indicated at the conclusion of our comments, we believe that these concerns may warrant a change in the CALFED approach.

We believe that many of the deficiencies of the CALFED program result from the extremely general definition of program purposes. Of particular concern is the definition of the program's

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purpose for water supply, which is stated as "The goal for water supply reliability is to reduce the mismatch between Bay-Delta water supplies and current and projected beneficial uses dependent on the Bay-Delta system." This overly broad purpose, by not stating specific targets for improved water supply needs, does not provide an adequate basis for identifying the need for water supply that will be required for a Clean Water Act Section §404 determination with respect to surface storage. Additionally, the lack of stated water supply purposes results in the need, as identified in Section 3.2 for subsequent growth-inducing analysis for future site-specific environmental documentation.

As with the Water Supply Reliability purpose, the other purposes of the CALFED program are also not described with adequate specificity for the program to be reviewed as a comprehensive whole. We believe that this lack of specific program purposes is a major deficiency in the CALFED program and has resulted in the evolution of the program from a comprehensive solution to Bay-Delta issues to its present status of numerous small, unrelated actions.

Alternatives Definition. One outcome of the lack of adequately defined program purposes and the evolution of the CALFED program is the limited extent of program alternatives. CALFED made decisions early in the alternatives development process to focus on conveyance issues as the chief distinguishing characteristic of their alternatives. Other program components were left the same for each alternative. This meant that individual potential elements of program components, which logically could have been included or excluded depending on the definition of other program components, were not changed between alternatives. Thus, for example, the greater need for water quality, ecosystem, and possibly water supply measures to compensate for the relatively poor water quality and fisheries performance of Alternatives 1 and 2 was never reflected in the definition of those alternatives.

With CALFED's decision to remove Alternative 3 from consideration, the differences between the Preferred Program Alternative and Alternatives 1 and 2 are nearly insignificant. By the limits it placed in defining alternatives, CALFED lost the ability to consider the potential for various alternatives to meet defined program purposes on a equivalent basis.

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No-Action Alternative. During 1996, CALFED conducted several meetings with stakeholders on the specific assumptions that should be used in their No-Action and Existing Conditions alternatives. In December 1996, CALFED distributed a report titled, "Final Report on Assumptions for Existing Conditions and the No-Action Alternatives" that summarized its assumptions for both alternatives. Those assumptions were used in CALFED's March 1998 Draft Programmatic EIS/EIR. The June 1999 Draft PEIS/EIR uses two different criteria for the No-Action Alternatives, one of which is changed significantly from the earlier criteria. No opportunity for public involvement was provided by CALFED in making these changes.

The No-Action Alternative "Criteria A" is a substantial departure from the earlier No-Action alternative. In addition to making review of the Program substantially more difficult, Criteria A applies an inconsistent approach to the specific assumptions it includes. Whereas the PEIS/EIR applies a rigorous approach to assumptions about which physical facilities are included or excluded from the No-Action Alternative, Criteria A assumes the implementation of strict Delta Regulatory standards that have never been proposed in public by any agency. Criteria A also arbitrarily assumes that 1995-level SWP and CVP demands could be maintained for the 30-year time frame of the PEIS/EIR, without identifying what population projections, water use efficiency measures, or shortages would be required to maintain that level of demand in the face of continued large population increases. By contrast, for physical facilities to be included, Criteria A requires that feasibility studies and environmental documentation be completed and that funding be identified. Another example of this inconsistent definition of the No-Action Alternative is on Page A-33, where the impacts of near-term changes in drinking water standards are not included in the No-Action Alternative even though draft revised standards are presently being considered by the Environmental Protection Agency.

Disclosure Needs.

Since release of the June 1999 Draft PEIS/EIR, CALFED has continued work on various elements of the Preferred Program Alternative and apparently plans on continuing that work during the remainder of 1999. Since these efforts have changed and will continue to change many elements of the Preferred Program Alternative, there will be a need for additional documentation prior to the release of the Final PEIS/EIR.

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Inadequate/Missing Program Components

In reviewing the Draft PEIS/EIR, a number of components appeared to be inadequate or omitted altogether. These components are essential for a balanced CALFED solution. The inadequate and missing program components are summarized below:

- **Water Supply Targets:** The DEIS/EIR documents state that CALFED will not specify targets for new water supplies. With the December 1994 Bay-Delta Accord, supplies to the State and Federal exporters were reduced by about one million acre-feet. To partially makeup for these losses, CALFED should establish targets for 200,000 acre-feet of new water supplies at the beginning of Stage 1 and 400,000 acre-feet of new supply at the end of Stage 1. Currently, the Draft PEIR/EIR indicates that the maximum amount of new water supply available without reservoirs (which could not be constructed during Stage 1) is 250,000 to 370,000 acre-feet. However, even these improvements would require facilities (such as South Delta Improvements) that are not available during Stage 1. In fact, Ag/Urban's analysis shows that CALFED's own Preferred Program Alternative would at best provide only a slight increase (much less than 200,000 acre-feet compared to the Ag/Urban base) and could reduce supplies by over 700,000 acre-feet. Clearly, any additional decline in water supplies would not be an acceptable outcome.
- **No Assurance that Conveyance Measures, including the South Delta Improvements, will Provide Timely Water Supply Benefits.** The period for implementing South Delta Improvements, which are the primary source of non-reservoir water supply measures identified in the Programmatic EIS/EIR, is extended past the end of Stage 1. Portions of supply increases from South Delta Improvements are given priority for environmental purposes through inflexible, inefficient prescriptive standards.
- **No Assurance That Water Quality Targets Will Be Met:** Although long-term targets for bromide and TOC are established, there is no indication that CALFED's drinking water quality actions will achieve those targets. Also, because interim water quality milestones are not established in the Draft PEIS/EIR, there is no schedule for achieving any specific improvement in water quality.
- **No Operating Assurances:** An Operating Agreement extending the Accord and making commitments to meet any additional environmental flows and/or operating criteria

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through water acquisitions or Environmental Water Account storage is not provided. Increased operational requirements and restrictions are included in the Preferred Program Alternative as one evaluation scenario, suggesting that CALFED's Preferred Program may in fact increase impacts to water users.

- **Inadequate Regulatory Assurances:** No programmatic §404 findings on the need for surface storage are included in the Draft PEIS/EIR, with CALFED indicating that "the Programmatic EIS/EIR for the Preferred Program Alternative will not establish a sufficient basis for a final determination of Section §404 compliance at the time of the ROD before Stage 1 begins." Additionally, the Multi-Species Conservation Strategy included in the Draft PEIS/EIR provides only for "programmatic biological opinions." ESA Section 7 "take" permits will be on a project-by-project basis. The Multi-Species Conservation Strategy does not indicate how or if it would be applied to an operating agreement.
- **Finance Approach Unrealistically Assumes User Fee:** Although the finance strategy was to be based on a principle that beneficiaries pay, the Draft PEIS/EIR makes no attempt to quantify any benefits to water uses. Without any quantified benefits to water users during Stage 1, it is unrealistic to assume the use of user fees.
- **Isolated Facility is Completely Eliminated From Program:** Studies related to the Isolated Facility are deleted. Feasibility, environmental, right-of-way and field studies included in the December 1998 Phase II Report and needed to implement a decision to proceed with an Isolated Facility are excluded from the June 1999 Draft PEIS/EIR documents. Analysis of an Isolated Facility would be considered only as part of a supplemental programmatic review which may or may not occur in the Stage 1 timeframe. The documents do not state the conditions that will trigger the need for conveyance and other program actions, and do not provide a clear process for the decisions on the need for an Isolated Facility. The documents indicate that an evaluation and decision process on the success of the conveyance element of the preferred program alternative will be deferred to a future supplemental programmatic analysis.

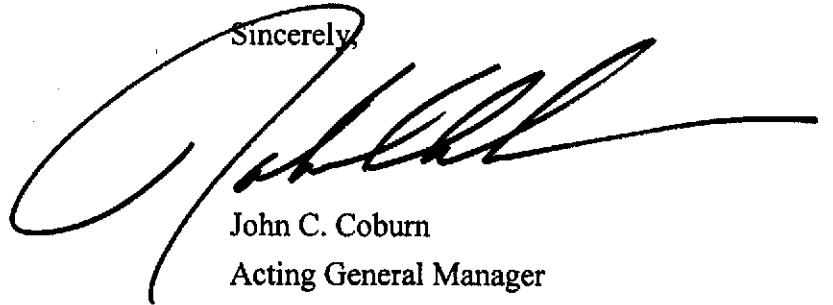
Conclusion

The State Water Contractors have major concerns with many elements of CALFED's Draft PEIS/EIR. We hope to continue working with CALFED in resolving these concerns and moving

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to implementation of a successful and balanced CALFED solution. If you have any questions about our comments, please call Terry Erlewine at (916) 447-7357.

Sincerely,

A large, stylized handwritten signature in black ink, likely belonging to John C. Coburn, is written over the word "Sincerely,".

John C. Coburn
Acting General Manager

Xc: Member Agencies
Tom Hannigan, Steve Macaulay, DWR
SWC Bay-Delta Workgroup